

25.402

48 CFR Ch. 1 (10-1-05 Edition)

	The service (Federal Service Codes from the Federal Procurement Data System Product/Service Code Manual are indicated in parentheses for some services.)	WTO GPA	NAFTA and Chile FTA	Singapore FTA	Australia and Morocco FTA
(6)	Transportation services (including launching services, but not including travel agent services—V503).	X	X	X	X
(7)	Utility services	X	X	X	X
(8)	Maintenance, repair, modification, rebuilding and installation of equipment related to ships (J019).	.....	X	.....	X
(9)	Nonnuclear ship repair (J998) .....	.....	X	.....	X

*NOTE 1. Acquisitions of the services listed at (2)(iii) of this table are a subset of the excluded services at (2)(i) and (ii), and are therefore not covered under the WTO GPA.

**NOTE 2. Acquisitions of the services listed at (4)(ii) of this table are a subset of the excluded services at (4)(i), and are therefore not covered under the WTO GPA.

[69 FR 1054, Jan. 7, 2004, as amended at 69 FR 77874, Dec. 28, 2004; 70 FR 18958, Apr. 11, 2005]

25.402 General.

(a)(1) The Trade Agreements Act (19 U.S.C. 2501, *et seq.*) provides the authority for the President to waive the Buy American Act and other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States, or that meet certain other criteria, such as being a least developed country. The President has delegated this waiver authority to the U.S. Trade Representative. In acquisitions covered by the WTO GPA, Free Trade Agreements, or the Israeli Trade Act, the USTR has waived the Buy

American Act and other discriminatory provisions for eligible products. Offers of eligible products receive equal consideration with domestic offers.

(2) The contracting officer shall determine the origin of services by the country in which the firm providing the services is established. See Subpart 25.5 for evaluation procedures for supply contracts covered by trade agreements.

(b) The value of the acquisition is a determining factor in the applicability of trade agreements. Most of these dollar thresholds are subject to revision by the U.S. Trade Representative approximately every 2 years. The various thresholds are summarized as follows:

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA	\$175,000	\$175,000	\$6,725,000
FTAs:			
NAFTA:			
—Canada	25,000	58,550	7,611,532
—Mexico	58,550	58,550	7,611,532
Chile FTA	58,550	58,550	6,725,000
Singapore FTA	58,550	58,550	6,725,000
Australia FTA	58,550	58,550	6,725,000
Morocco FTA	175,000	175,000	6,725,000
Israeli Trade Act	50,000	.....	.....

[69 FR 77874, Dec. 28, 2004]

25.403 World Trade Organization Government Procurement Agreement and Free Trade Agreements.

(a) Eligible products from WTO GPA and FTA countries are entitled to the nondiscriminatory treatment specified in 25.402(a)(1). The WTO GPA and FTAs specify procurement procedures designed to ensure fairness (see 25.408).

(b) *Thresholds.* (1) To determine whether the acquisition of products by lease, rental, or lease-purchase contract (including lease-to-ownership, or lease-with-option-to purchase) is covered by the WTO GPA or an FTA, calculate the estimated acquisition value as follows:

(i) If a fixed-term contract of 12 months or less is contemplated, use the total estimated value of the acquisition.

(ii) If a fixed-term contract of more than 12 months is contemplated, use the total estimated value of the acquisition plus the estimated residual value of the leased equipment at the conclusion of the contemplated term of the contract.

(iii) If an indefinite-term contract is contemplated, use the estimated monthly payment multiplied by the total number of months that ordering would be possible under the proposed contract, *i.e.*, the initial ordering period plus any optional ordering periods.

(iv) If there is any doubt as to the contemplated term of the contract, use the estimated monthly payment multiplied by 48.

(2) The estimated value includes the value of all options.

(3) If, in any 12-month period, recurring or multiple awards for the same type of product or products are anticipated, use the total estimated value of these projected awards to determine whether the WTO GPA or an FTA applies. Do not divide any acquisition with the intent of reducing the estimated value of the acquisition below the dollar threshold of the WTO GPA or an FTA.

(c) *Purchase restriction.* (1) Under the Trade Agreements Act (19 U.S.C. 2512), in acquisitions covered by the WTO GPA, acquire only U.S.-made or designated country end products or U.S. or designated country services, unless offers for such end products or services are either not received or are insufficient to fulfill the requirements. This purchase restriction does not apply below the WTO GPA threshold for supplies and services, even if the acquisition is covered by an FTA.

[64 FR 72419, Dec. 27, 1999, as amended at 65 FR 36026, June 6, 2000; 67 FR 21535, Apr. 30, 2002; 67 FR 56123, Aug. 30, 2002; 69 FR 1054, Jan. 7, 2004; 69 FR 77875, Dec. 28, 2004]

25.404 Least developed countries.

For acquisitions covered by the WTO GPA, least developed country end products, construction material, and services must be treated as eligible products.

[69 FR 77875, Dec. 28, 2004]

25.405 Caribbean Basin Trade Initiative.

Under the Caribbean Basin Trade Initiative, the United States Trade Representative has determined that, for acquisitions covered by the WTO GPA, Caribbean Basin country end products, construction material, and services must be treated as eligible products.

[65 FR 24322, Apr. 25, 2000, as amended at 67 FR 6118, Feb. 8, 2002; 69 FR 1055, Jan. 7, 2004; 69 FR 77875, Dec. 28, 2004]

25.406 Israeli Trade Act.

Acquisitions of supplies by most agencies are covered by the Israeli Trade Act, if the estimated value of the acquisition is \$50,000 or more but does not exceed the WTO GPA threshold for supplies (see 25.402(b)). Agencies other than the Department of Defense, the Department of Energy, the Department of Transportation, the Bureau of Reclamation of the Department of the Interior, the Federal Housing Finance Board, and the Office of Thrift Supervision must evaluate offers of Israeli end products without regard to the restrictions of the Buy American Act. The Israeli Trade Act does not prohibit the purchase of other foreign end products.

[64 FR 72419, Dec. 27, 1999, as amended at 67 FR 21535, Apr. 30, 2002; 69 FR 1055, Jan. 7, 2004; 69 FR 77875, Dec. 28, 2004]

25.407 Agreement on Trade in Civil Aircraft.

Under the authority of Section 303 of the Trade Agreements Act, the U.S. Trade Representative has waived the Buy American Act for civil aircraft and related articles, that meet the substantial transformation test of the Trade Agreements Act, from countries that are parties to the Agreement on Trade in Civil Aircraft. Those countries are Austria, Belgium, Bulgaria, Canada, Denmark, Egypt, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, Macao, the Netherlands, Norway, Portugal, Romania, Spain, Sweden, Switzerland, and the United Kingdom.